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HONG LEONG BANK BHD

v.

**PENTADBIR TANAH, SEBERANG PERAI
SELATAN & ANOR**

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HIGH COURT MALAYA, PENANG
VARGHESE GEORGE JC
[ORIGINATING MOTION NO: 25-69-2010]
19 MAY 2011

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LAND LAW: *Caveats - Registrar's caveat - Refusal to cancel - Whether applicant had locus standi - Whether applicant's application under s. 321(3)(c) contradicted with s. 418 of the National Land Code - Whether action commenced within three months of communication of entry of registrar's caveat - National Land Code, ss. 321(3)(c), 418*

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The first respondent lodged a registrar's caveat over 22 lots of land charged by its registered owner, one Motif Unik Sdn Bhd ('MUSB') (under liquidation) to the applicant, the registered chargee. The applicant thus filed the present proceedings against the first respondent's decision to enter the registrar's caveat. The proceedings was in the nature of an appeal pursuant to ss. 418 and 321(3)(c) of the National Land Code ('NLC'). MUSB, by separate proceedings, had also appealed against the decision of the first respondent but its appeal was against the first respondent's decision in refusing to cancel the registrar's caveat entered against the same said lots. MUSB's application was pursuant to s. 321(3)(b) of the NLC. Both the appeals were however being brought pursuant to s. 418 of the NLC and what was being sought was a removal or cancellation of the registrar's caveat under s. 321(3)(c). The court was also called to determine on an additional issue *ie*, the objection raised by the respondents, that the applicant as a registered chargee had no *locus standi* or capacity to seek the orders applied for to effect a cancellation of the registrar's caveat.

Held (allowing the applicant's appeal with costs):

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(1) By s. 321(3)(c) of the NLC, the life or existence of a registrar's caveat may also be ended by an order of court made pursuant to an appeal under s. 418 of the NLC. On the facts, the appeal of the applicant in respect of the entry of

the registrar's caveat did not in any way contradict the provision of s. 418. The entry of the registrar's caveat was an "act" of the first respondent. There was also more than adequate evidence that the first respondent had refused to cancel the registrar's caveat on the application of MUSB, the owners of the land. Therefore, no conflict or inconsistency when s. 418 is read together with s. 321(1)(3)(c). (paras 15-17)

- (2) In the circumstances, the applicant had the necessary *locus standi* to bring an "appeal" against the entry of the registrar's caveat, and should the appeal be allowed, s. 321(3)(c) went on to provide the legislative authority for such order on the appeal to be given effect to by the registrar by the cancelling of the registrar's caveat. (para 17)
- (3) Further, the applicant's appeal in this instant case was brought within three months of the entry of the registrar's caveat being communicated to them as envisaged by s. 418 of the NLC. (paras 18-22)
- (4) Hence the objection raised by the respondents on the issue of *locus standi* was devoid of any merits. The applicant had the capacity within the provisions of the NLC itself to pursue with the appeal against the first respondent's entry of the registrar's caveat. Further, the applicant had a right to appeal against the first respondent's refusal to cancel the registrar's caveat on the application of MUSB, the registered proprietor of the said lots. (para 25)

Case(s) referred to:

- Development & Commercial Bank Bhd v. Government of Malaysia & Ors* [1989] 2 CLJ 1205; [1989] 1 CLJ (Rep) 486 HC (**refd**)
- Lim Ah Hun v. Pendaftar Hakmilik Tanah, Pulau Pinang & Anor* [1990] 2 CLJ 640; [1990] 2 CLJ (Rep) 369 HC (**refd**)
- Malayan Banking Bhd v. Pendaftar Hakmilik, Negeri Pahang & Anor* [1990] 2 CLJ 999; [1990] 2 CLJ (Rep) 425 HC (**refd**)
- MUI Finance Bhd v. Pendaftar Hakmilik, Shah Alam & Anor* [1992] 1 LNS 50 HC (**refd**)
- Public Bank Bhd v. Pengarah Tanah & Galian & Anor* [1990] 2 CLJ 346; [1990] 1 CLJ (Rep) 241 SC (**refd**)

Legislation referred to:

National Land Code, ss. 321(2), (3)(b), (c), 417, 418(1), (3)

A Other source(s) referred to:

Teoh Keong Sood & Khaw Lake Tee, *Land Law in Malaysia, Cases and Commentary*, pp 436-439

For the applicant - Adrian Hü; M/s Shook Lin & Bok

For the 1st respondent - Muhammad Ilmami Hj Ahmad, State Legal Advisor

B For the 2nd respondent - Surendran Suppiah; M/s Surendran Suppiah & Assocs

Reported by Emm Zehra

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JUDGMENT

Varghese George JC:

D [1] The application in this originating motion was by the registered chargee of 22 lots of land (the said lots) over which the 1st respondent had lodged a registrar's caveat. The registered owner of the said lots (the chargor) was one Motif Unik Sdn Bhd (now under liquidation) (MUSB).

E [2] This proceeding was in the nature of an appeal brought pursuant to s. 418 and s. 321(3)(c) of the National Land Code (NLC) by the applicant against the 1st respondent's decision to enter the registrar's caveat. The applicant sought from the court the following orders:

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- (i) Keputusan Responden untuk memasukkan Kaveat Pendaftar Jilid No.0703 B2010000541 Perserahan No. 541/2010 pada 7.6.2010 diketepikan;
 - G** (ii) Kaveat Pendaftar Jilid No.0703 B2010000541 Perserahan No. 541/2010 yang dimasukkan pada 7.6.2010 dibatalkan;
 - (iii) Kos permohonan ini dibayar oleh Responden; dan
 - (iv) Lain-lain perintah dan/atau relif yang dianggap sesuai oleh Mahkamah ini.

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I [3] MUSB by separate proceedings had also appealed against the decision of the 1st respondent but in that case the appeal was against the 1st respondent's decision refusing to cancel the registrar's caveat entered against the same said lots. MUSB's application there was pursuant to s. 321(3)(b) of the NLC. That

appeal, which also came up before me for disposal, formed the subject matter of the proceedings under reference Originating Summons No. 25-71-2010 (MUSB's OS proceedings). I heard MUSB's OS proceedings first and on 3 March 2011 had *inter alia* ordered there that the registrar's caveat over the said lots lodged *vide* Presentation No. 541/2010 be removed forthwith.

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[4] Except for one issue, all other issues raised by the respondents in objections to this appeal here in this proceedings were similar to that raised and considered by me in MUSB's OS proceedings.

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As my grounds for decision in MUSB's OS proceedings are materially relevant and equally applicable in the disposal of this instant proceedings, the 'Grounds of Decision' in the MUSB's OS proceedings is included here as 'Annexure – A' here for ease of reference and completeness.

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[5] With respect to MUSB's OS proceedings, it need to be highlighted that:

- (i) There was no dispute there that MUSB was the registered proprietor or owner of the said lots;
- (ii) the 1st Respondent had entered the Registrar's Caveat (*vide* Presentation No. 541/2010 on 07.06.2010) at the request of Jabatan Siasatan Jenayah Komersial, Ibu Pejabat Polis Kontigen, Pulau Pinang (the Police) based on a 13 year old Police Report No. 1046/97 lodged by the 2nd Respondent;
- (iii) the 1st Respondent had refused to cancel the Registrar's Caveat on the application of MUSB notwithstanding that it had been shown that in previous Court proceedings brought by the 2nd Respondent, the Court had conclusively held that the 2nd Respondent had no maintainable interest over or in the said lots; and
- (iv) the 1st Respondent had refused to cancel the Registrar's Caveat purely on the ground that the Police had not withdrawn their original request for the Registrar's Caveat to be entered against the said lots.

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[6] It bears repeating here that the difference between the MUSB's OS proceedings and this instant matter was that MUSB's OS proceedings was an appeal by the proprietor of the said lots when their application to the 1st respondent

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A (s. 321(3)(b)) to remove the registrar's caveat was refused. In this instant case the appeal was however by the registered chargee of the said lots.

B Both the said appeals were however being brought pursuant to s. 418 of the NLC and what was being sought was a removal or cancellation of the registrar's caveat under s. 321(3)(c) by the 1st respondent.

C [7] In this instant case, the one additional issue that the court was called to determine was the objection raised by both the respondents' here, that the applicant as a registered chargee had no *locus standi* or capacity to seek the orders applied for to effect a cancellation of the registrar's caveat.

The Respondents' Argument

D [8] It was contended for the respondents that the registrar's caveat could only be cancelled by the 1st respondent either on the 1st respondents own motion (volition) or on an application to cancel the registrar's caveat by the proprietor of the land
E concerned that is, if acceded to by the 1st respondent, as provided for in s. 321(3) of the NLC. It was also argued that s. 321(3)(c) ('... pursuant to any order of the court made an appeal under s. 418 ...') had to be restricted to such appeals brought by the proprietor of the land concerned where his
F application to the 1st respondent to cancel the registrar's caveat was rejected.

[9] In support of this line of submission, counsel for the 2nd respondent cited two decisions both of the High Court, namely:

- G (i) *Malayan Banking Bhd v. Pendaftar Hakmilik, Negeri Pahang & Anor* [1990] 2 CLJ 999; [1990] 2 CLJ (Rep) 425, a decision of Lamin J (as he then was); and
H (ii) *MUI Finance Bhd v. Pendaftar Hakmilik, Shah Alam & Anor* [1992] 1 LNS 50, a decision of M. Shanker J (as he then was).

The Applicant's Contention

I [10] The applicant on the other hand urged the court to hold that as a chargee of the said lots they had a right, independent of the registered proprietor of the said lots, to appeal pursuant to

s. 418 of the NLC against the decision of the 1st respondent in entering in the first place the registrar's caveat over the said lots. The applicant argued that in their position as the registered chargee they were being prevented from 'foreclosing' or otherwise lawfully acting to realise the security (to which they were entitled) by the presence of the registrar's caveat over the said lots. Accordingly they were qualified to be a 'person or body aggrieved' by the decision of the 1st respondent.

[11] It was also stressed that the 'decision' against which an appeal could be brought by virtue of the express terms found in s. 418(3) included 'any act, omission, refusal, direction or order' (emphasis added)

It was further contended that apart from the entry of the registrar's caveat by the 1st respondent (which was being appealed against), there was ample evidence before the court as well of the 1st respondent's refusal to cancel the registrar's caveat upon the application of the registered proprietor of the said lots.

[12] Counsel for the applicant cited the following authorities to substantiate his position that the applicant as a chargee of the said lots had the legal capacity to prosecute this appeal independent of the right of the registered proprietor:

- (i) Decision of Mohamed Dzaiddin J (as he then was) in *Lim Ah Hun v. Pendaftar Hakmilik Tanah, Pulau Pinang & Anor* [1990] 2 CLJ 640; [1990] 2 CLJ (Rep) 369;
- (ii) The Supreme Court decision *Public Bank Bhd v. Pengarah Tanah & Galian & Anor* [1990] 2 CLJ 346; [1990] 1 CLJ (Rep) 241;
- (iii) Decision of KC Vohrah J in *Development & Commercial Bank Bhd v. Government of Malaysia & Ors* [1989] 2 CLJ 1205; [1989] 1 CLJ (Rep) 486; and
- (iv) Extract from *Land Law in Malaysia, Cases and Commentary* (Teoh Keang Sood & Khaw Lake Tee), pp. 436 to 439.

The Court's Assessment

[13] The starting point of any discussion on whether the applicant, as a registered chargee, had the capacity to bring this

- A appeal would necessarily have to be the relevant statutory provisions. They are, in this case, s. 321 and s. 418 of the NLC and are reproduced here:

Procedure with respect to Registrar's Caveat and duration thereof

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321(1) A Registrar's Caveat shall be in Form 19F and the entry of the Registrar's Caveat on any document of title shall be effected by the endorsement thereon, under the hand and seal of the Registrar, of the words "Registrar's Caveat entered", together with a statement of the time of entry.

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(2) As soon as may be after the entry of any such caveat, the Registrar shall serve upon the proprietor of the land and any person or body having a registered interest in the land thereby affected a notification in Form 19A.

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(3) A Registrar's Caveat shall continue in force until it is cancelled by the Registrar:

(a) of his own motion; or

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(b) on application in that behalf by the proprietor of the land affected; or

(c) pursuant to any order of the Court made on an appeal under s. 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under paragraph (b)

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(4) Where the Registrar effects a cancellation under subsection (3), the Registrar -

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(a) if he is acting under paragraph (a) of that subsection, shall notify the proprietor of the land and any person or body having a registered interest in the land affected; and

(b) in all cases, shall make a note under his hand and seal of the date of the cancellation.

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and,

Appeals to the Court

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418(1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.

(2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereof as it considers just. A

(3) In this section 'decision' includes any act, omission, refusal, direction or order. B

[14] It is to be noted that by s. 321(2), after the entry of a registrar's caveat, it is incumbent upon registrar (the 1st respondent in this case) to serve in Form 19A a notice of such entry on the proprietor and any person or body having a registered interest in the land. C

It is clear from the aforesaid that the applicant as a registered chargee is therefore entitled to receive the said notice. This is implicit, if not explicit, recognition that a registered chargee like the applicant is not a stranger or outsider with regard to process of the entry or removal of such a registrar's caveat. D

[15] What then calls for consideration by this court is the construction to be given to s. 321(3)(c) of the NLC. As observed earlier, the registrar's caveat may be cancelled by the registrars on his or her own motion(volition) or on an application in that behalf made by the proprietor of the land affected. E

By s. 321(3)(c), the life or existence of a registrar's caveat may also be ended by an order of court made pursuant to an appeal under s. 418 of the NLC. A careful reading of subsection (c) would disclose that any order made pursuant to such an appeal is not restricted to an appeal against refusal to remove the caveat by the owner of the land. Two types of orders made on appeal are clearly envisaged in that provision. They are: F G

- (i) an order on an appeal against the registrar's decision to enter the caveat, or
- (ii) an order on an appeal against the registrar's refusal to cancel the registrar's caveat under subsection (b), namely the application of the proprietor of the land for such a cancellation. H

To emphasise, in situation (i), it is an appeal against the entry of the registrar's caveat, whereas in situation (ii), it is an appeal by the registered proprietor against a refusal of the registrar to cancel the registrar's caveat. I

A In this instant case, the appeal of the applicant, it was maintained, was in respect of the entry of the registrar's caveat. This is adequately borne out by the first prayer in the application itself in the following terms: "Keputusan responden untuk memasukan kaveat ... diketepikan."

B [16] Does this obvious position emanating from a proper and ordinary reading of s. 321(3)(c), in any way contradict the provision of s. 418 which deals with appeals to the court brought against decisions of the registrar under the NLC? I do not think so for the following reasons:

C The proper party to prosecute an appeal under the wide purport of s. 418 is as expressly provided for: 'Any person or body aggrieved by any decision' including any decision that had been made by a Registrar.

D By s. 418(3) such 'decision' against which an appeal may be taken include 'any act, ..., refusal, ...

E It cannot be disputed that the entry of the registrar's caveat (at the request of the Police, may it be so) was an 'act' of the 1st respondent. There was also more than adequate evidence as well that the 1st respondent had refused to cancel the registrar's caveat on the application of MUSB, the owners of the land.

F [17] There arises therefore, in my assessment, no conflict or inconsistency when s. 418 is read together with s. 321(1), (3)(c). In fact those provisions are in harmony with each other and they bear out the intention of the draftsmen behind those provisions in the NLC to allow any affected person to appeal against any act, omission or refusal of the registrar in the context of the registrar's duties under the NLC.

G Now viewed against the factual context obtaining in this case, I had no doubt that the applicant had the necessary *locus standi* to bring an 'appeal' against the entry of the registrar's caveat, and should that appeal be allowed, s. 321(3)(c) went on to provide the legislative authority for such order on the appeal to be given effect to by the registrar by the cancelling the registrar's caveat.

H [18] In the extract from *Land Law in Malaysia, Cases and Commentary*, it noted at p. 438 as follows:

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In regard to the cancellation of a Registrar's Caveat, it may be noted that the Registrar may effect the cancellation on his own motion or he may do so on an application by the proprietor of the land. In the event of a refusal by the Registrar to do so in the latter case, the proprietor may make an appeal under s. 481 of the 1965 Code against the Registrar's refusal. *If there is a person other than the proprietor who is aggrieved by the Registrar's decision to enter the caveat, that person may appeal under s. 418 of the same Code.* An appeal under s. 418 by any person or body aggrieved by any decision of, *inter alia*, the Registrar must be made within three months from the date on which the decision was communicated to him.

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Again at p. 439:

However, it is clear that *where the chargee objects to the entry of the Registrar's Caveat after the Registrar's decision to enter the caveat has been communicated to him, the remedy of appeal under s.418 against the decision to enter the caveat is undoubtedly available to him.* As this remedy of appeal is the one and only remedy available to the chargee to have the caveat cancelled in such a situation, it will be fatal to proceed by a different mode of procedure to obtain redress before the Court.

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[19] Mohamed Dzaidin J in *Lim Ah Hua's* case, (where the applicant was a purchaser of the property pursuant to a agreement), after commenting on the s. 418(1) went on to hold:

Therefore, in the light of s. 418, the applicant comes within sub-s. (3)(c). On the facts, the applicant, being the beneficial and equitable owner of the said property, is an 'aggrieved person' within the meaning of s. 418(1) of the Code. Thus, under s. 321(3)(c) the registrar can cancel the registrar's caveat pursuant to an order of Court made under s. 418 by any person aggrieved by the decision of the Director, Registrar or any Land Administrator.

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[20] The Supreme Court in the *Public Bank Bhd's* case [1990], where the appeal was dismissed as it was not brought within the three months stipulated in s. 418, nevertheless instructively observed as follows:

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The decision in this case, which could be appealed against by the appellant, who is not the proprietor of the said land, under s. 418 of the NLC 1965, was the act of the registrar in entering the Registrar's Caveat.

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- A [21] The *Development & Commercial Bank Bhd* case involved an appeal by a chargee – bank (who had obtained a prior order for sale) for the removal of the registrar’s caveat on the land concerned. It was pursued as an application under s. 417 of the NLC and was in any event brought after the expiry of the stipulated three months within which the appeal had to be filed.
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KC Vohrah J noted there:

- C If there is a person other than the proprietor who is aggrieved by the Registrar’s decision to enter the caveat, that person may, as is provided for under para (c) of s. 321(3), appeal under s. 418 of the Code.

- D Here is a case where the plaintiff company, as chargee of a piece of land, had obtained a Court order to sell the land. And the Court order was obtained earlier than the date on which the Registrar’s Caveat was entered on the said land. When it received notice of the entry of the Registrar’s Caveat it cannot be gainsaid that it was aggrieved at the decision of the registrar to enter his caveat. The remedy that was open to the plaintiff company was to appeal against the decision of the registrar entering the caveat, proceeding under s. 321(3)(c) read with s. 418 of the Code. This was not done.
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- [22] The applicant’s appeal in this instant case was brought within the three months of the entry of the registrar’s caveat being communicated to them. There was no dispute on this.
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- [23] As regards the authorities advanced by counsel for the 2nd respondent, it must be pointed at that Lamin J’s decision in *Malayan Banking Bhd* was then on appeal to the Supreme Court in any event (the outcome of which is not available) and in any event there does not seem to have occurred a closer examination of s. 321(3)(c) and the two situations covered in that sub-subsection arising from an appeal under the wide provisions of s. 418.
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- H [24] In the *MUI Finance Berhad* case also cited by counsel for the 2nd respondent, Shanker J appears to have concentrated attention on the decided legal position that the existence of a prior registered charge did not preclude the registrar from lodging a caveat. There was no discussion of the rights of the chargee under s. 418 or of the significance of the avenues open pursuant to s. 321(3)(c) which was the statutory gateway for an aggrieved person such as a chargee to obtain an order on an appeal (under s. 418) to effect a cancellation of the registrar’s caveat.
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[25] For the reasons set out above, I held that the objection of the respondents to this appeal on the issue of the applicant's *locus standi* was devoid of any merits. The applicant had capacity found within the provisions of the NLC itself to pursue with this appeal against the 1st respondent's entry of the registrar's caveat. I would go further to venture that even for that matter the applicant had a right to appeal against the refusal of the 1st respondent to cancel the registrar's caveat on the application of MUSB, the registered proprietor of the said lots.

[26] As alluded to earlier, the other objections of the 1st and/or 2nd respondents to this appeal were the same objections taken in MUSB's OS proceedings. They had been rejected for the reasons stated in my grounds of decision included here as Annexure – 'A'. After having heard respective counsel for the parties, I adopted the finding and conclusion in Annexure 'A' as also applicable in this case as well.

[27] I proceeded to allow the appeal with costs to the applicant, which was then fixed at RM6,500.

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